petitioner was a Party member was directly pertinent to whatever succeeding questions the subcommittee might have asked concerning the Party's reorganization and reconstruction (since the Committee had information that petitioner was a leading Party member), the Party's propaganda activities in the South (since it had information that petitioner participated in such Party activities in that area), and the direction of the Party in the South by northern agents (since it had information that petitioner was a leader of Party infiltration in the South).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

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IN THE

Supreme Court of the United States

October Term, 1960

No. 37

FRANK WILKINSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR THE PETITIONER

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Opinions Below

The opinion and order of the Court of Appeals entered on December 14, 1959 (R. 63), is reported at 272 F. 2d 783. The District Court issued no opinion.

Jurisdiction

The opinion and judgment of the United States Court of Appeals was entered December 14, 1959 (R. 63). A petition for rehearing was denied on January 14, 1960 (R. 70). The petition for a writ of certiorari, filed February 12, 1960, was granted on March 28, 1960 (R. 267). The jurisdiction of this Court rests on 28 U. S. C. 1254(1).

Constitutional and Statutory Provisions Involved

Constitution of the United States

Amendment I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment V. No person shall * * * be deprived of life, liberty, or property without due process of law * * *.

Statutes

2 U. S. C. Section 192, R. S. 102, 52 Stat. 942, as amended:

> Refusal of witness to testify.
>
> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who having appeared, refuses to answer any questions pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month or more than twelve months.

Public Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 828) and House Resolution 5 of the 83rd Congress read in relevant part:

> (b) Rule XI of the Rules of the House of Representatives is amended to read as follows:
>
> Rule XI
>
> Power and Duties of Committees.
>
> (1) All proposed legislation, messages, petitions, memorials, and matters related to the subjects listed

under the standing committees named below shall be referred to such committees, respectively:

17. Committee on Un-American Activities.

(a) Un-American Activities.

(b) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

Questions Presented

I. Whether the requirements of the contempt statute were satisfied in that the question petitioner refused to answer was pertinent to a question under inquiry. Whether the requirements of due process were satisfied by the pertinence of the question petitioner refused to answer being made indisputably clear to him.

II. Whether Congress authorized the Committee to investigate public opposition to it, and whether the Committee conferred such authority on the instant subcommittee.

III. Whether petitioner's conviction violates the First Amendment.

IV. Whether the Committee had a legislative purpose in subpoenaing petitioner, or rather the unlawful purpose of harassing or exposing him.

Statement of the Case

Proceedings Below

Petitioner, Frank Wilkinson, was indicted in the District Court for the Northern District of Georgia under an indictment charging violation of 2 U. S. C. § 192 for refusing to answer a question before a subcommittee of the House Committee on Un-American Activities in a hearing in Georgia on July 30, 1958 (R. 1). The indictment charged, in substance, that petitioner "unlawfully refused to answer" the following question "pertinent to the question then under inquiry • • •, Are you now a member of the Communist Party?"

The District Court decided as a matter of law that the questions asked petitioner "were pertinent to the subject matter under investigation • • •" and "that the committee had the right to ask this question and the defendant had the duty to answer" it (R. 57). The District Judge submitted to the jury the question of whether the pertinency was made apparent to appellant "with undisputed clarity" (R. 60).

Petitioner was convicted and sentenced to the term of 12 months (R. 3), the maximum provided by statute.

The Court of Appeals affirmed the judgment of conviction (R. 63); it did not, however, attempt to summarize or specify the subject of the hearings, merely quoting the entire statements of the Committee chairman and of the Committee's counsel. It further held that the investigation was authorized and constitutional, stating that "The appellant here admitted that he was engaged in aggressive opposition to the continued functioning of the Committee • • • [I]t was within the province of the Committee to make inquiries to ascertain whether Un-American Communist influences were attempting to weaken the Government by impeding and crippling the operation of its legislative branch" (R. 69).

The Subcommittee Proceedings

In December of 1956, petitioner had been subpoenaed to appear before a different subcommittee of the House Committee on Un-American Activities that was then conducting hearings in Los Angeles. He did so appear before the Committee but refused to answer any questions, stating his reasons for such refusal in substantially the same terms as he stated such refusal to answer in the hearings that resulted in the instant case (R. 35-36).

The subcommittee conducting the instant hearings was authorized by the full Committee to investigate the following:

> "1. The extent, character and objects of Communist colonization and infiltration in the textile and other industries located in the South, and the Communist Party propaganda activities in the South, the legislative purpose being:
>
> (a) To obtain additional information for use by the Committee in its consideration of Section 16 of H.R. 9352, relating to the proposed amendment of Section 4 of the Communist Control Act of 1954, prescribing a penalty for knowingly and wilfully becoming or remaining a member of the Communist Party with knowledge of the purposes or objectives thereof; and
>
> (b) To obtain additional information, adding to the Committee's overall knowledge on the subject so that Congress may be kept informed and thus prepared to enact remedial legislation in the National Defense, and for internal security, when and if the exigencies of the situation require it.
>
> 2. Entry and dissemination within the United States of foreign Communist Party propaganda, the legislative purpose being to determine the necessity for, and advisability of, amendments to the Foreign Agents Registration Act designed more effectively to counteract the Communist schemes and devices now used in avoiding the prohibitions of the Act.

3. Any other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct this hearing, may designate." (Govt. Exh. 1, R. 79)

At the commencement of the subcommittee's hearings in Atlanta, Georgia on July 29, 1958, the chairman made an opening statement of its purpose, referring generally to the jurisdiction and past achievements of the full Committee and of the present danger to the country of the Communist Party (R. 80-82). Petitioner was present during this statement of purpose of these particular hearings (R. 34). The first witness was Armando Penna, a former member of the Communist Party (at the request of the FBI). He discussed at some length the efforts of the Party to "colonize" the textile industry generally and particularly in the South (R. 83-96, 98-102). His testimony was not confined to this, however, and under questioning he discussed whether or not a Communist Party member could attend church (R. 96), the difference between a united front and a Party front (R. 97), and the Party's efforts in opposition to the Walter-McCarran Immigration and Nationality Act (R. 97). The next witness, Eugene Feldman, refused to testify on the basis of his rights under the First and Fifth Amendments (R. 104-109). He was followed by Irving Fishman, who discussed the influx of Communist political propaganda from abroad (R. 109-117). The next witness was Perry Cartwright, the business manager of the *Southern Newsletter*. The questions asked him primarily concerned this publication, which was not otherwise described. These questions elicited the information that while the paper had a Louisville, Kentucky, mailing address it was in fact printed in Chicago (R. 119). Further questions concerned whether or not certain persons were identified with the publication (R. 120-121) and background information as to where the witness had lived and gone to school (R. 121-122). He was also questioned about a publication called the *Southerner*, which apparently dealt with race relations (R. 121).

The following witness, Clara Hetcherson Saba, was questioned about her labor union activities in the South and her relationship to the Communist Party. She was also questioned about the reason for her discharge from employment after she had received a subpoena to appear before the subcommittee. She was followed on the witness stand by her husband, Mitchell Saba, whose interrogation, outside of background information about his life, was primarily confined to trying to elicit from him a statement as to why he did not apply for employment at the Radford Arsenal in Virginia; he testified that his only employment in the South was work on a farm and peddling vegetables in Atlanta, Georgia (R. 138).

The following day, on July 30, 1958, the first witness before the subcommittee was Carl Braden. He was questioned concerning his employment as Field Secretary of the Southern Conference Educational Fund (R. 142), his relation to a petition submitted to the Congress by 200 Negro leaders in the South (R. 147), a meeting held in the American Red Cross Building in Atlanta (R. 151), and a letter which he and his wife had addressed to friends urging them to write to the Congress concerning pending legislation (R. 153). The petitioner was the following witness.

Petitioner's Testimony Before Committee

After identifying himself on the stand, the petitioner was advised by the Committee's counsel of the general powers and duties of the Committee (R. 156). The Committee's counsel then stated to him:

> "It is the information of the committee or the suggestion of the committee that in anticipation of the hearings here in Atlanta, Georgia, you were sent to this area by the Communist Party for the purpose of developing a hostile sentiment to this committee and to its work for the purpose of undertak-

ing to bring pressure upon the United States Congress to preclude these particular hearings. It is the fact that you were not even subpoenaed for these particular hearings until we learned that you were in town for that very purpose and that you were not subpoenaed to appear before this committee until you had actually registered in the hotel here in Atlanta." (R. 156.)

Petitioner objected to answering the questions put to him by the Committee, stating:

> "I challenge, in the most fundamental sense, the legality of the House Committee on Un-American Activities. It is my opinion that this committee stands in direct violation by its mandate and by its practices of the first amendment to the United States Constitution. It is my belief that Congress had no authority to establish this committee in the first instance, nor to instruct it with the mandate which it has.
>
> I have the utmost respect for the broad powers which the Congress of the United States must have to carry on its investigations for legislative purposes. However, the United States Supreme Court has held that, broad as these powers may be, the Congress cannot investigate into an area where it cannot legislate, and this committee tends by its mandate and by its practices, to investigate into precisely those areas of free speech, religion, peaceful association and assembly, and the press, wherein it cannot legislate and therefore it cannot investigate.
>
> I am, therefore, refusing to answer any questions of this committee." (R. 158.)

The Committee's counsel then introduced into evidence a reproduction of petitioner's registration at the Atlanta Biltmore Hotel on July 23, 1958, on which petitioner had indicated that his business firm association was the "Emergency Civil Liberties Committee" (R. 159). He was fur-

ther questioned concerning various long distance phone calls allegedly made by him from his hotel room (R. 160). Petitioner continued to refuse to answer all questions.

Thereafter petitioner was cited by the Congress for contempt and subsequently indicted.

Summary of Argument

I. For a valid conviction under the contempt statute, a legislative committee must have had a definite subject under inquiry, and the question the witness refused to answer must have been pertinent to that subject. These requirements were not here satisfied, because the subject of the hearing was vague and uncertain in the extreme. The statements of the committee chairman and counsel indicated that the entire field of internal security was the subject of the hearings, and that they encompassed the whole area covered by the Committee's mandate.

In the absence of pertinence it was an impossibility for pertinence to be made indisputably clear to petitioner, and thus the requirements of due process, established in this Court's *Watkins* decision, were not satisfied.

II. The Committee's purpose in summoning and questioning petitioner was to investigate his public efforts to persuade people of the Committee's inutility and that Congress should abolish it. There is nothing in the legislative history to indicate that Congress intended to grant the Committee this novel and dangerous power to investigate individuals because they publicly criticize and oppose the Committee. Since this investigative authority would lie in a highly sensitive Constitutional area, not only affecting the general rights to freedom of expression, but also the right to petition the government for a redress of grievances, the Committee mandate should not be construed to include this authority.

Even if the Committee itself is deemed to have the power to investigate public criticism of it, the resolution authorizing the Atlanta hearings in which petitioner testified does not specify that the subcommittee has such authority; and it should not be construed to grant power in a highly sensitive Constitutional area in the absence of clear and definite language.

III. Petitioner's conviction violates the First Amendment, because the infringement of the rights to free expression and to petition the government for a redress of grievances was not here out-balanced by considerations of the national security. On the one hand, the right to criticize a government agency and to rally opinion in favor of legislative change is a most crucial aspect of the First Amendment protection. And there is no doubt under the opinions of this Court that the Committee's power to summon and question its opponents is a deterrent to criticism. On the other side of the balance, there is no indication from the Committee's information about petitioner and its purpose in questioning him, of any concern with foreign domination, revolutionary activity, or overthrow of the Government—factors to which this Court pointed as justification in *Barenblatt* v. *United States*. Overthrow of the Government, as an ultimate Communist purpose, cannot justify an investigation of activity that is its very antithesis—that is, public efforts to persuade people of the necessity for legislative change.

IV. Since the subcommittee subpoenaed petitioner because he was thought to have come to Atlanta for the purpose of rallying sentiment against the Committee, it is clear that he was not called because of a connection with the matters which the subcommittee was studying for legislative purposes. By summoning him on the spot in the midst of his efforts to persuade people of the Committee's

inutility, the Committee used its subpoena power to stop him, attempted to discredit him, and, thus sought to deter attempts to rally sentiment against the Committee by petitioner or others in the area.

ARGUMENT

I. The question petitioner refused to answer was not pertinent to a question under inquiry, and the requirements of the contempt statute were, therefore, not satisfied. The pertinence of the question petitioner refused to answer was not made indisputably clear to him, and the requirements of due process were, therefore, not satisfied.

Requirements for a valid conviction under the contempt statute (2 U. S. C. 192), as interpreted by the decisions of this Court are that a legislative investigating committee have an ascertainable subject under inquiry, and that the question the witness refused to answer is pertinent thereto.[1] The subject of the hearing on which this indictment is based was vague and uncertain in the extreme; thus neither of these statutory requirements was satisfied.

At the outset of the hearings the resolution authorizing them was incorporated in the record. The subjects for investigation specified in the resolution were Communist infiltration of the textile and other Southern industry, Communist propaganda in the South, dissemination of Communist propaganda from abroad, and any other subjects designated by the Committee or subcommittee (R. 79-80). (There is no record that any other were designated.) In opening the hearing, however, the chair-

[1] See *Barenblatt*, 360 U. S. 109, at pp. 123-4; *Watkins*, 354 U. S. 178, at pp. 207-214.

man stated that the Committee was responding to its power and duty to accumulate factual information respecting the entire field of internal security (R. 80). During the questioning of the witnesses preceding petitioner, which covered a variety of subjects (pp. 5-7, *supra*), there were no statements delimiting the questions under inquiry. At the outset of petitioner's questioning, however, committee counsel repeated in summary form the chairman's statement, stating that the purpose of the hearings was, in effect, to cover the whole field of internal security (R. 156); the subcommittee member then acting as subcommittee chairman then added to this pronouncement (R. 157).

The court below quoted these statements of the committee chairman and counsel without itself attempting to identify the subject of the hearing (R. 63-67). Petitioner urges that there was no subject that was sufficiently clear, specific and definite to constitute a "question under inquiry" within the meaning of the contempt statute. The subject matter was in effect as broad as the mandate of the Committee. Compare *Watkins*, 354 U. S. at p. 209, *Barenblatt*, 360 U. S. at p. 117. Under these circumstances a necessary pre-condition for pertinency was lacking. Two statutory components of the crime of contempt—a definite question under inquiry and a question pertinent to that inquiry—are absent.

In the absence of a definite subject it was impossible for pertinency to be made indisputably clear to petitioner, and thus for the requirements of due process, established in *Watkins*, to be satisfied. If the witness' behavior at the hearing is deemed crucial with respect to the right to raise the due process point,[2] we suggest that a general objection to the investigation, such as petitioner's, should be regarded as sufficient. Particularly when he appears without counsel, an objection in the technical terms of

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[2] See *Barenblatt*, 360 U. S. 109, at p. 123.

"pertinency" should not be required. Petitioner's objection included his view that he did not comprehend the basic purpose of the investigation or the reason for calling him (R. 155). Furthermore, since Committee counsel had, directly before petitioner's objection, explained pertinency by referring to subjects as inclusive as the Committee's mandate (R. 155-156), it was appropriate for a pertinency objection to refer generally to the Committee's mandate.[3]

II. Congress did not authorize the Committee to investigate public opposition to it, nor did the Committee confer such authority on the instant subcommittee.

The petitioner was subpoenaed to appear before the subcommittee's hearing in Atlanta because, in the words of the Committee's counsel, of information that he was "sent to this area by the Communist Party for the purpose of developing a hostile sentiment to this committee and to its work for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings. It is the fact that you were not even subpoenaed for these particular hearings until we learned that you were in town for that very purpose." (R. 156.)

Not only is it clear from counsel's statement that petitioner's interrogation must be appraised from the standpoint of whether the Committee had power to investigate criticism of itself, but this is also clear from other circumstances. Conducting rallies and meetings to persuade people that Congress should abolish the committee was the only activity by petitioner on which the committee had information (R. 30) and which also might be deemed to bear any

[3] Since the question was impertinent as a matter of law, its pertinence could not be made clear, and the jury's finding on this point is nugatory.

relation to the subject under investigation.[4] Furthermore, petitioner's connection with propaganda against the Committee (and the FBI) was the only reason for calling him that is mentioned in the Committee summary of the hearings (R. 78).

The court below upheld the Committee's authority to investigate petitioner's opposition to the Committee, on the basis that under this Court's *Barenblatt* decision the Committee's authority should be held to include "the power to investigate activities directed to interference with the legislative processes and their functioning" (R. 69).

There was nothing in the record to indicate that the petitioner was in any way attempting to interfere with "the legislative processes and their functioning." On the contrary it is abundantly clear that he came to Atlanta and registered at the hotel as the open representative of the Emergency Civil Liberties Committee (Govt. Exh. 1, R. 159), which was carrying on a public campaign to persuade persons to urge the Congress to abolish the House Committee on Un-American Activities.

Such an activity is clearly addressed to petitioning the Government for redress of grievances protected by the First Amendment and cannot be presumed to come within the Congressional authorization to the Committee to investigate "un-American propaganda activities" with the view of enacting or revising legislation in the field.

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[4] While committee counsel, apparently for the purpose of all inclusiveness in the event of litigation, listed some general topics on which petitioner was to be questioned, they either were not matters with which he was thought to have any connection or were not related to the authorized subjects of investigation. (See R. 30-33, 156-157.) Similarly, the question mentioned by the chairman of the subcommittee—the re-organization of the Communist Party (R. 157)—was not an authorized subject, nor, indeed, one that the subcommittee was investigating.

The court below, relying on this Court's upholding of the Lobbying Act in *United States* v. *Harriss*, 347 U. S. 612, held that, "Since legislation in the area may be enacted, investigations by legislative agencies are authorized" (p. 787).

Here the court erred. To hold as it must have intended that such investigations *may be authorized* is far from holding that such investigations by this particular Committee *had been authorized*. This Court in *Barenblatt*, *supra*, held that the "persuasive gloss of legislative history" had corrected whatever Constitutional infirmities by reason of vagueness this Committee's mandate may have had. However, there is nothing in the legislative history indicating the Committee was granted the novel and dangerous authority to investigate individuals because they publicly criticize and oppose the Committee.

The power to investigate the expression of a viewpoint is undoubtedly the power to discourage its further expression (*infra*, p. 18). It is unprecedented for a government ageney to have the power to deal coercively with its critics; even the judicial branch, with greater claim than the legislative to insulation from public opinion, must tolerate criticism (see p. 17, *infra*).

The authority here claimed by the Committee lies in the area protected by the First Amendment not only because it affects freedom of expression, but also because it affects the right to petition for a redress of grievances which is specifically protected by the Amendment. The Committee's mandate should be construed to avoid this Constitutional danger zone. The Court recognized this danger in *Harriss*, *supra*. Mr. Chief Justice Warren, speaking for the Court, construed the Lobbying Act "narrowly to avoid constitutional doubts" (p. 623). He stated at page 620, "[W]e believe this language should be construed to refer only to 'lobbying in its commonly accepted sense'—to direct

communication with members of Congress on pending or proposed Federal legislation." And, at page 625, "Under these circumstances, we believe that Congress, at least within the bounds of the Act as we have construed it, is not constitutionally forbidden to require the disclosure of lobbying activities."

Congress has made no effort to expand this definition of "lobbying" and in any event the petitioner has been unable to find any indication that Congress intended to authorize this Committee to investigate lobbying activities however defined.

We have not here dealt with the problem of the Committee's authority to question anyone that a prior witness or confidential informant has allegedly said was known to the witness or informant as a Communist. (See R. 158.) Whatever may be the scope of this authority, it is clear that the subcommittee did not call petitioner to question him about the alleged Communist activity to which a witness had testified or an informant had submitted information, or because of his connection with other alleged Communist activity under investigation, but rather because of his opposition to the Committee. (See pp. 13, 14, *supra*, at note 4.)

* * *

Even if the mandate of the Committee itself should be construed to include investigation of such public criticism of a committee of Congress as is here involved, the resolution establishing these particular hearings in Atlanta (pp. 5, 6, *supra*) certainly does not specify the authority for such an investigation. The resolution should not be deemed to confer authority that is unprecedented and in a highly sensitive Constitutional area, in the absence of a clear and definite grant.

III. Petitioner's conviction violates the First Amendment.

The Court below held that petitioner's conviction was valid under the First Amendment because Congress has power to regulate lobbying activities and because

> "The activities in which the appellant was believed to be participating presented a more direct threat to the national security than those of which Barenblatt was suspected. The decision in the *Barenblatt* case is controlling here." (R. 69)

We urge that the conviction cannot be upheld under the First Amendment on these or any other grounds because the activities in which petitioner was believed to be participating consisted of public criticism of the Committee and attempts to influence public opinion to petition Congress for redress—to abolish the Committee.

In *Barenblatt*, *supra*, this Court, as it has in its other decisions dealing with the limits of the Congressional power to investigate, recognized that First Amendment validity depends on a "balancing" of competing rights and interests. The right here at stake requires the highest protection, for the very purpose of preserving First Amendment rights is "to the end that government may be responsive to the will of the people." *DeJonge* v. *Oregon*, 299 U. S. 353, 365. The decisions of this Court recognize that freedom to criticize an agency of government is essential to this First Amendment end, and that an agency's power to coerce and crush criticism is antithetical to our form of government. See *Bridges* v. *California*, 314 U. S. 252, 269-271; see also *Pennekamp* v. *Florida*, 328 U. S. 331, 346-7; *Craig* v. *Harney*, 331 U. S. 367, 374-5. Even with respect to criticism of pending judicial proceedings, this Court said "no suggestion can be found in the Constitution that the freedom there guaranteed for speech and the press bears an inverse ratio to the timeliness and

importance of the ideas seeking expression", and affirmed the rights to expression and petition protected by the First Amendment. See *Bridges*, 314 U. S. at p. 277.

There can no longer be any question that the Committee's power to summon, question, and expose witnesses serves as a coercion and a deterrent.[5] The threat of a Committee summons and interrogation is a potent one. Even assuming *arguendo* that the Committee intended to question petitioner on other matters besides his opposition to the Committee, there is no doubt that the activity which stimulated the subcommittee's summons was his opposition to the Committee. Thus, the summons and questioning of petitioner necessarily acts as a deterrent to criticism of the Committee. If petitioner's conviction is upheld, the Committee can use its investigatory power to harass and intimidate its critics, and thus to interfere with First Amendment rights in their most vital aspect.

On the other side of the balance, the "national security" interest to which the court below adverted, seems highly insubstantial. Assuming *arguendo* that the Committee is important to national security, its existence is hardly to be immunized from the customary play of opinion and responsiveness to the will of the people. Nor is control of public opinion with respect to the work of Congressional committees within the legislative powers of Congress. (Compare *Harriss* v. *United States*, quoted p. 15, *supra*.); indeed, there has been no suggestion that such legislation could be enacted, or that the Committee conceived of this possibility.

In the *Barenblatt* opinion this Court pointed out in justification for the investigation, that there was "considerable testimony concerning the foreign domination and

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[5] See *Watkins*, 354 U. S. at pp. 197-198; compare *Barenblatt*, 360 U. S. at p. 134; see *NAACP* v. *Alabama*, 357 U. S. 449; *Bates* v. *Little Rock*, 361 U. S. 516; *Talley* v. *California*, 362 U. S. 60.

revolutionary purposes and efforts of the Communist Party" (360 U. S. at pp. 131-132), and that the committee was there concerned with infiltration for the purpose of attempting to overthrow the government. In the Committee's information about petitioner and its purpose in summoning him (See R. 30; 156.), there is no indication of concern with foreign domination, revolutionary activity, or efforts to overthrow the government. If the alleged ultimate Communist purpose of overthrow is sufficient to warrant an investigation of public efforts to persuade people of the necessity for legislative change—an investigation of activity that is the antithesis of violence—then indeed committees are enpowered to "radiate outwardly infinitely." (*Watkins* v. *United States*, 354 U. S. 178, 204.)

The Committee will have vast and dangerous power to coerce its critics and thus suppress criticism if petitioner's conviction is upheld. In *Uphaus* v. *Wyman*, 360 U. S. 72, this Court held that a legislative committee did not violate the First Amendment in investigating meetings and other propaganda activities even if neither past nor present Communist Party membership was alleged against the witness, and even if he was questioned about persons against whom there was likewise no allegation of membership. (See 360 U. S. at p. 79.) If this Court now holds the First Amendment is no barrier to Committee investigation of public opposition, the Committee can summon and pillory anyone who criticizes it, with an allegation, at the most, of purported information that he has some tangential or third or fourth-hand association with the Communist Party.

IV. The Committee did not have a legislative purpose in subpoenaing petitioner, but rather the unlawful purpose of harassing or exposing him.

It is clear that the subcommittee subpoenaed petitioner because he was thought to have come to Atlanta for the purpose of rallying sentiment against the Committee. (See pp. 13; 14, *supra*.) Thus, we can put to one side the possibility that he was called because of some connection with the textile industry or with any of the Southern activities on which the subcommittee had been gathering information. The Committee, therefore, cannot be thought to have summoned petitioner because of the legislative proposals it was considering.

While the subcommittee spoke of the petitioner's coming to Atlanta "to disrupt the committee hearings" (R. 78), there is no indication in the hearings or otherwise of any physical interference or verbal disturbance at the hearings. Thus, it was not concerned with disruption in this sense. Disruption, to the committee, meant opposition asserted through peaceful political expression and lawful means. But Congress cannot, constitutionally, legislate against criticism of the committee, and indeed the committee does not even assert the power to deal with its critics and opponents through legislation. We, therefore, urge that here no motive can be attributed to the committee except to harass and discredit petitioner. By summoning him on the spot in the midst of his efforts to persuade people of the Committee's inutility, the Committee used its subpoena power to stop him, attempt to discredit him, and to deter attempts to rally sentiment against the committee by petitioner or others in the area.

That that purpose, together with laying the basis for a contempt charge, was the Committee's motive in questioning petitioner, is also demonstrated by the fact that the Committee had previously called petitioner and he had

previously stated his refusal to cooperate with the Committee.

In December of 1956, the petitioner had been subpoenaed to appear before hearings of the Committee at Los Angeles. He there declined to answer the questions of the Committee and made essentially the same statement of reasons for declining to answer them (R. 66).

Petitioner's case is clearly distinguished from *Flaxer* v. *United States*, 358 U. S. 147, where the Senate cited for contempt after Flaxer was given ten days to produce certain documents but thereafter was not called back before the Committee or otherwise ordered to produce them. This Court, in reversing the resulting conviction, said: "[A] witness who was adamant and defiant on October 5 might be meek and submissive on October 15" (at p. 151).

Here the case is different. During the nineteen-month period following petitioner's refusal to answer questions put to him by the Committee not only was he not "meek and submissive" but he had carried on a continuous public campaign for the abolition of the Committee of which the Committee was well aware (Govt. Exh. 1, R. 156). Indeed, according to counsel for the Committee, "you were not even subpoenaed to appear for these particular hearings until we learned that you were in town"[6] for that very purpose (R., *ibid.*). Under these circumstances there clearly was no reasonable possibility that petitioner would change his views on the Constitutional necessity to refuse to answer questions of the Committee. The only possible purpose of forcing his appearance was to harass by exposure and thus attempt to discredit his criticism of the Committee itself.

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[6] Counsel should have said, "were coming to town" because actually the subpoena was issued in Washington the day before and was served in Atlanta within an hour after Wilkinson's arrival (R. 41).

CONCLUSION

For the foregoing reasons, the judgment below should be reversed and the conviction of the petitioner held invalid.

Respectfully submitted,

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